

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|  |   |                      |
|--|---|----------------------|
| In the Matter of                           | ) |                      |
|  | ) |                      |
| Service Rules for the 698-746, 747-762     | ) | WT Docket No. 06-150 |
| and 777-792 MHz Bands                      | ) |                      |
|  | ) |                      |
| Former Nextel Communications, Inc. Upper   | ) | WT Docket No. 06-169 |
| 700 MHz Guard Band Licenses and Revisions  | ) |                      |
| to Part 27 of the Commission's Rules       | ) |                      |
|  | ) |                      |
| Implementing a Nationwide, Broadband,      | ) | PS Docket No. 06-229 |
| Interoperable Public Safety Network in the | ) |                      |
| 700 MHz Band                               | ) |                      |
|  | ) |                      |
| Development of Operational, Technical and  | ) | WT Docket No. 96-86  |
| Spectrum Requirements for Meeting Federal, | ) |                      |
| State and Local Public Safety              | ) |                      |
| Communications Requirements Through the    | ) |                      |
| Year 2010                                  | ) |                      |
|  | ) |                      |

To: The Commission

**COMMENTS OF SPECTRUMCO LLC**

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## EXECUTIVE SUMMARY

SpectrumCo LLC (“SpectrumCo”) is a new entrant in the market for wireless services, having recently acquired 137 EA-sized licenses in the Commission’s Advanced Wireless Services auction (“AWS-1 auction”). The various cable multiple system operators (“MSOs”) that are members of SpectrumCo are committed to providing wireless broadband services, and thus have a strong interest in seeing that the Commission’s upcoming 700 MHz auction is structured to maximize efficiency and flexibility for all potential participants. Balancing the interests of a wide range of potential bidders requires the adoption of a band plan that promotes opportunities for all, including new entrants and incumbents alike.

***The Commission Should Adopt a Band Plan That Maximizes the Potential Range of Auction Participants:*** To obtain successful auction results, the Commission must ensure that the auction is a market-based process – and thus fair and open to the widest range of potential participants – by making it possible for all interested parties to bid for spectrum licenses in the auction. The Commission must avoid prejudging or tailoring the auction process and the 700 MHz band plan to suit the demands, business plans, and resources of only a handful of commenters or potential bidders. The Commission’s past attempts to pick winners and substitute its own judgment for that of the market have been unsuccessful, leading to problems such as those seen in auctions for the PCS C Block, LMDS, the 700 MHz guard band, and 1670-1675 MHz. No matter how well-intentioned, the Commission is not going to be as effective as the marketplace in identifying the highest and best uses of spectrum and the parties that are most qualified to effect those uses.

***Economic Principles That Promote Flexibility and Accommodate a Wide Range of Business Plans Should Guide 700 MHz Decisions:*** SpectrumCo’s experience in the Commission’s highly successful AWS-1 auction conclusively demonstrated that bidders can

acquire a nationwide package of licenses on an EA basis. SpectrumCo continues to believe, on the strength of its experience and the economic evidence that it submitted previously in these proceedings, that (1) smaller-bandwidth licenses (such as 10 MHz blocks in the Upper 700 MHz band) will maximize flexibility for all bidders; (2) EA licenses are best suited to meet the demand for medium and large geographic area coverage; and (3) only one CMA license is needed to meet the demand for spectrum licenses with small geographic area coverage.

***The Commission Should Adopt Proposal 2 for the Upper 700 MHz Band:*** Proposal 2 strikes the proper balance among license sizes and reflects the principles endorsed by the overwhelming majority of commenters and potential bidders in this proceeding. The Commission should not adopt Proposal 1, which would elevate certain business plans and potential bidders over others and would likely foreclose participation by all but the largest incumbent carriers and exceedingly well-financed companies. Moreover, Proposal 1 would substantially reduce the number of bidders, make the auction less competitive, and reduce auction revenues.

***The Commission Should Not Adopt Combinatorial Bidding or Blind Bidding:*** There is no basis in the record for adopting untested approaches for combinatorial bidding or blind bidding at this late date. Implementing proposals put forward by certain commenters would decrease the efficiency of the 700 MHz auction, to the ultimate detriment of the post-auction marketplace.

***Performance Requirements Proposed in the Further Notice Should Be Rejected:*** The Commission should not depart radically from its successful substantial service regime in order to adopt more prescriptive performance benchmarks or a “keep what you use” rule. The Commission thus should reject the proposed geographic coverage-based performance

benchmarks, because the adoption of such uneconomic and inefficient requirements will harm rather than promote the deployment of facilities and networks utilizing the 700 MHz spectrum.

***Restricting Participation By Existing Broadband Providers Is Unnecessary and Counterproductive:*** The Commission should likewise reject anticompetitive eligibility restrictions and any other proposals to preclude or reduce participation in the 700 MHz auction by existing broadband providers. There is no basis in the record for reviving previously failed policies or instituting new restrictions on participation by such providers. Implementing these proposals is a misguided attempt to foster competition, which would instead harm competition both during the auction and in the post-auction marketplace.

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To: The Commission

**COMMENTS OF SPECTRUMCO LLC**

**I. INTRODUCTION**

SpectrumCo LLC ("SpectrumCo"),<sup>1</sup> through its attorneys, hereby submits these comments in response to the Federal Communications Commission's April 27, 2007, Further Notice of Proposed Rulemaking ("*Further Notice*") in the above-captioned proceedings.<sup>2</sup> A new entrant in the market for wireless services, SpectrumCo recently acquired 137 licenses in the Commission's Advanced Wireless Services auction ("AWS-1 auction"). SpectrumCo's cable

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<sup>1</sup> SpectrumCo is a Delaware limited liability company, managed by C Spectrum Investment, LLC, a subsidiary of Comcast Corporation. Class B equity owners of SpectrumCo are C Spectrum Investment, LLC; Time Warner Cable LLC, a subsidiary of Time Warner Inc.; Cox Wireless, Inc., a subsidiary of Cox Enterprises, Inc.; and Bright House Networks, LLC.

<sup>2</sup> See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-72 (rel. Apr. 27, 2007) ("*700 MHz Report and Order*" and "*Further Notice*").

multiple system operator (“MSO”) members are committed to providing wireless broadband services and have a strong interest in the Commission’s upcoming 700 MHz auction.

To ensure a successful auction, the Commission must ensure that the auction is a market-based process – and thus fair and open to the widest range of potential participants – by making it possible for all parties to acquire spectrum licenses in the auction. The Commission should avoid preordaining the auction results by tailoring the band plan to benefit a handful of commenters and potential bidders. Instead, the Commission should ensure that the licensed spectrum ends up in the hands of those who value it the most, including entities of all sizes and those interested in serving rural as well as urban consumers. As SpectrumCo has previously explained, ensuring an efficient distribution of licenses requires a flexible band plan that accommodates the maximum number of rational business plans. Specifically, the Commission should find that:

- Smaller bandwidths (10 MHz blocks in the Upper 700 MHz band) will maximize flexibility;
- EA licenses are best suited to meet the demand for medium and large geographic area coverage, with added efficiencies for each additional block licensed on an EA basis; and
- Only one CMA license is needed to meet the demand for spectrum licenses with small geographic area coverage.<sup>3</sup>

Consistent with these principles and with the goal of achieving a fair, competitive auction, the Commission should adopt Proposal 2 for the Upper 700 MHz band,<sup>4</sup> which includes three 10 to 12 MHz licenses and smaller EA geographic areas. The Commission should not adopt Proposal 1, which limits competition, preordains auction results, and effectively places the Commission’s imprimatur on certain business plans and potential bidders. The Commission also

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<sup>3</sup> Coleman Bazelon, “Principles for Choosing 700 MHz Block License Sizes,” WT Docket No. 06-150 (filed Mar. 6, 2007) (“Bazelon Principles”).

<sup>4</sup> *Further Notice* ¶¶ 192-93.



should refrain from using combinatorial bidding or blind bidding mechanisms in the auction. Finally, the Commission should reject the proposed geographic coverage-based performance benchmarks and anticompetitive eligibility restrictions discussed in the *Further Notice*. These proposals are not supported by the record or sound policy and would harm the 700 MHz auction and the post-auction marketplace.

## **II. THE COMMISSION SHOULD ADOPT A BAND PLAN THAT MAXIMIZES THE POTENTIAL RANGE OF AUCTION PARTICIPANTS AND SHOULD NOT PREJUDGE THE 700 MHz AUCTION RESULTS**

The Commission should design a competitive 700 MHz auction that encourages participation by a diverse set of bidders and facilitates the deployment of new and advanced services on both the local and national levels. As demonstrated by the numerous commenters in this proceeding, a large and diverse group of potential bidders, including existing service providers and new entrants, are potentially interested in using 700 MHz spectrum to deploy services to the public. Section 309(j) requires the Commission to promote “an equitable distribution of licenses and services among geographic areas,”<sup>5</sup> and “avoid[ ] excessive concentration of licenses . . . by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.”<sup>6</sup>

Congress intended for market forces, not the Commission, to determine auction winners. With the Commission’s failed comparative hearing and lottery strategies in mind,<sup>7</sup> Congress

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<sup>5</sup> 47 U.S.C. § 309(j)(4)(C).

<sup>6</sup> *Id.* § 309(j)(3)(B).

<sup>7</sup> See H.R. Rep. No. 103-111, at 248 (1993). Congress noted that “in many respects the [Commission’s] current licensing methods for assigning spectrum have not served the public interest,” stating that “[c]omparative hearings frequently have been time consuming, causing technological progress and the delivery of services to suffer,” and that “[l]otteries engendered rampant speculation; undermined the integrity of the FCC’s licensing process and, more importantly, frequently resulted in unqualified persons winning [a] license.” *Id.* Congress also noted that “lotteries have been characterized by ‘get rich quick’

established the market-based mechanism of auctions to “encourage innovative ideas” and “ensure that scarce spectrum is put to its highest and best use.”<sup>8</sup> Given the critical importance of spectrum auctions as a tool for assigning spectrum, the Commission must design the auction carefully to promote the development of new technologies, products, and services; utilize the spectrum efficiently for the benefit of the public; promote rapid deployment of services to all Americans; and provide opportunities for small businesses.<sup>9</sup> No matter how well-intentioned, the Commission is not going to be as effective as the marketplace in identifying the highest and best uses of spectrum and the parties that are most qualified to effect those uses.

Despite Congress’ clear intentions, the Commission has at times attempted to substitute its judgment for the judgment of the market when designing an auction. These efforts to micromanage auctions and preordain winners and losers have generally failed, and should not be replicated here. For example, in the PCS C Block auction (Auction 5), the Commission’s desire to guarantee new market entry by small businesses resulted in valuable spectrum laying fallow

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appeals,” and that the lottery system has been “widely criticized for failing to meet the FCC’s public interest standard and for encouraging unproductive speculation for spectrum licenses.” *Id.*

<sup>8</sup> See *id.* at 249; see also H.R. Conf. Rep. No. 105-217, at 573 (1997). The Commission has acknowledged the importance of competitive auctions in assigning spectrum to those who value it most. See, e.g., *Space Station Licensing Rules and Policies*, IB Docket No. 02-34, Notice of Proposed Rulemaking and First Report and Order, 17 FCC Rcd 3847, 3870 ¶ 65 (2002) (“Congress’s dissatisfaction with comparative hearings was prominently evidenced . . . in its expansion in 1997 of the Commission’s auction authority. In 1997, Congress amended Section 309(j) by requiring that all mutually exclusive applications for initial licenses . . . ‘shall’ be auctioned except in certain cases not relevant here.”) (internal citations omitted); *Public Notice DA 00-49 Auction of C and F Block Broadband PCS Licenses, NextWave Personal Communications, Inc. and NextWave Power Partners Inc. Petition for Reconsideration*, File Nos. 00341CWL96, *et al.*, Order on Reconsideration, 15 FCC Rcd 17500, 17513 ¶ 24 (2000) (“Section 309(j) embodies a presumption that licenses should be allocated as a result of an auction to those who place the highest value on the use of the spectrum. Such entities are presumed to be those best able to put the licenses to their most efficient use.”); *Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use*, ET Docket No. 94-32, Second Report and Order, 11 FCC Rcd 624, 644-46 (1995) (“[T]he system of competitive bidding . . . will lead to the issuance of licenses to those parties who value the licenses most highly and who thus can be expected to make efficient and intensive use of the spectrum . . . .”); *Revision of Rules and Policies for the Direct Broadcast Satellite Service*, IB Docket No. 95-168, Notice of Proposed Rulemaking, 11 FCC Rcd 1297, 1329 ¶ 77 (1995) (“More than any other method of awarding construction permits, auctions are likely to foster the rapid deployment of new technologies and products by putting spectrum in the hands of those who value it most highly.”).

<sup>9</sup> See H.R. Rep. No. 103-111, at 246.

for many years.<sup>10</sup> In the LMDS auction, the Commission's imposition of unnecessary eligibility restrictions based on its assumption of how the spectrum would be used caused valuable spectrum to essentially lay fallow for a decade and led to a drastic disparity between realized and expected auction revenues.<sup>11</sup> Likewise, the Commission's prohibition on cellular architecture and its attempt to force a leasing market experiment by adopting rigid spectrum use and affiliation restrictions in the 700 MHz guard band spectrum caused most qualified potential bidders to sit out the auction and resulted in minimal use of the spectrum post-auction.<sup>12</sup> In addition, the Commission's desire to cater to a particular company's service proposal resulted in a severe lack of participation in the 1670-1675 MHz auction, with one bidder (not the one for whom the service rules were tilted) winning the license for the minimum bidding price.<sup>13</sup>

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<sup>10</sup> See, e.g., *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket 97-82, Second Report and Order and Further Notice of Proposed Rule Making, 12 FCC Rcd 16436 (1997) (recognizing the financial difficulties faced by C Block licensees and offering payment alternatives); *Wireless Telecommunications Bureau Announces Broadband Personal Communications Services C Block Elections*, Public Notice, 13 FCC Rcd 16705, 16723-29 (1998) (listing the payment options selected by C Block licensees, including many returned licenses).

<sup>11</sup> *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 12545, 12556 ¶ 13 (1997) ("*LMDS Second Report and Order*"). The Commission prohibited in-region incumbent local exchange carriers ("ILECs") and cable providers from bidding on or obtaining the large 1150 MHz A Block LMDS licenses for three years. *Id.* The eligibility restrictions, however, led to a negative impact on auction results, and the LMDS auction raised only \$578.6 million – a fraction of the \$4 billion that it had been expected to net. See *LMDS Auction Ends with \$578.6 Million Raised, Far Under Forecast*, Communications Daily (Mar. 26, 1998); Auction 17, Local Multipoint Distribution System (LMDS), at [http://wireless.fcc.gov/auctions/default.htm?job=auction\\_summary&id=17](http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=17).

<sup>12</sup> See *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299, 5312-13 ¶¶ 26-27, 5325 ¶ 59 (2000) ("*Upper 700 MHz Second Report and Order*"). Only 15 bidders qualified to participate in Auction 33, and only minimal services have been deployed in the guard bands. See Auction 33, Upper 700 MHz Guard Bands, at [http://wireless.fcc.gov/auctions/default.htm?job=auction\\_summary&id=33](http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=33). After finding that such restrictions "may prevent access by parties that could make actual use of the band, and hinder[ ], rather than facilitate[ ], the efficient use of the spectrum," the Commission recently removed the guard band manager regime and the licensee use and eligibility restrictions and adopted its market-based secondary markets regime for the bands. See *700 MHz Report and Order* ¶¶ 162-66.

<sup>13</sup> In its service rules decision, the Commission adopted a band plan consistent with the request of one vocal commenter, ArrayComm. See *Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License*

The potential for a similar outcome exists here if the auction is structured solely to satisfy the requests of a single group that has “*promised to try to provide* a national, wireless broadband alternative.”<sup>14</sup> Although it may be tempting for the Commission to seize upon the promises or demands of certain commenters in this proceeding, past Commission efforts to tailor spectrum auctions to meet the goals of a potential bidder or a desired policy outcome have tended not to produce the expected or desired outcomes. The stakes in the 700 MHz auction are too high for mistakes like these to be made again.

Of course, there are no guarantees when it comes to Commission auctions. The Commission does not know who will ultimately apply to participate, or how much money applicants will bring to the auction table. Despite widespread expectations fueled by some commenters, members of the high-tech community did not participate in the AWS-1 auction, and some have already indicated that they do not intend to participate in the 700 MHz auction.<sup>15</sup> In the AWS-1 auction, Wireless DBS stopped bidding on day four, after bidding for the REAG licenses approached levels of only half the per MHz-pop price for which these licenses eventually sold.<sup>16</sup> Indeed, although DirecTV and EchoStar continue to pressure the Commission

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*Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands*, WT Docket No. 02-8, Report and Order, 17 FCC Rcd 9980 (2002). The Commission adopted a single 5 MHz nationwide license for the band, which would have allowed ArrayComm to offer its i-BURST time division duplex (“TDD”) system. The Commission also delayed the beginning of the auction for six months at ArrayComm’s request. However, ArrayComm did not even qualify as an eligible bidder for the auction and the auction ended after two rounds, with only one of the two qualified bidders participating.

<sup>14</sup> 700 MHz Report and Order, Separate Statement of Chairman Kevin J. Martin (emphasis added).

<sup>15</sup> See Auction 66, Advanced Wireless Services (AWS-1), at [http://wireless.fcc.gov/auctions/default.htm?job=auction\\_summary&id=66](http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=66). There are clear indications that these same companies may not participate in the upcoming 700 MHz auction either. See John Markoff, *Google Proposes Innovation in Radio Spectrum Auction*, N.Y. Times (May 22, 2007), available at <http://www.nytimes.com/2007/05/22/technology/22google.html> (“Executives at Google . . . said that the company had no plans to bid in the closely watched sale of a swath of broadcast spectrum scheduled for February 2009 as part of the nation’s transition to digital broadcast television.”).

<sup>16</sup> See Auction 66, Advanced Wireless Services (AWS-1), at [http://wireless.fcc.gov/auctions/default.htm?job=auction\\_summary&id=66](http://wireless.fcc.gov/auctions/default.htm?job=auction_summary&id=66).

for nationwide or REAG-based 20 MHz license blocks for the 700 MHz auction,<sup>17</sup> their past auction experience indicates that they may not be willing to make the necessary investment in broadband wireless licenses that an auction might demand.<sup>18</sup> In addition, recent statements from DirecTV's management indicate that it has not yet decided whether it will even participate in the 700 MHz auction.<sup>19</sup>

Precisely because of the uncertainty surrounding auction bidders, the Commission should design the 700 MHz auction to allow full and fair competitive bidding from a broad array of bidders. Rather than trying to "pick winners," and either implicitly or explicitly giving certain entities a boost through eligibility restrictions and peculiar service rules, with no guarantees about the ultimate outcome, the Commission should allow market forces to determine the winners in the 700 MHz auction. Only then can the nation be confident that the spectrum will be put to its highest and best use.

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<sup>17</sup> See, e.g., Joint Comments of DIRECTV, Inc. and EchoStar Satellite L.L.C., WT Docket No. 06-150, at 3-7 (filed Sept. 29, 2006); Joint Reply Comments of DIRECTV, Inc. and EchoStar Satellite L.L.C., WT Docket No. 06-150, at 1-4 (filed Oct. 20, 2006); *Ex Parte* Presentation of EchoStar Satellite L.L.C., WT Docket No. 06-150 (filed Jan. 12, 2007); *Ex Parte* Presentation of EchoStar Satellite L.L.C., WT Docket No. 06-150 (filed Feb. 21, 2007).

<sup>18</sup> See *High-Speed Service Not Critical to DBS, Maffei Says*, Communications Daily (May 16, 2007) (quoting a statement by Liberty Media CEO Greg Maffei that DBS operators like DirecTV don't need a high-speed data offering to stay competitive, and that while WiMAX may work for mobile services in the long term it is not clear that such WiMAX-based offerings will have the bandwidth to be competitive with wireline broadband and data offerings).

<sup>19</sup> See The DirecTV Group, Inc., Q1 2007 Earnings Conference Call (May 9, 2007), available at <http://phx.corporate-ir.net/phoenix.zhtml?c=127160&p=irol-IRHome> (including statements by DirecTV management that "it's probably early at this point to determine in what ways [DirecTV] might approach [the 700 MHz auction]"); see also *700 MHz Auction, Broadband Deployment, WRC-07, USF Among Topics Discussed at FCBA Retreat*, TR Daily (May 7, 2007) (quoting a statement by George Reed-Dellinger, a partner and senior telemedia analyst with Washington Analysis, that the odds of the 4G Coalition acting as a bidding consortium are "below 50%").

### **III. PROPOSAL 2 FOR THE UPPER 700 MHz BAND PLAN BEST MEETS THE COMMISSION'S GOALS IN THIS PROCEEDING**

In the *Further Notice*, the Commission seeks comment on various band plan proposals for licensing the unauctioned commercial spectrum in the 700 MHz band.<sup>20</sup> For the Upper 700 MHz band in particular, the Commission seeks comment on five proposals that offer specific arrangements of block sizes and geographic area licenses.<sup>21</sup> Although each proposal purports to offer a mix of license sizes, Proposal 2<sup>22</sup> best satisfies the Commission's goals of adopting a true mix of geographic areas; facilitating auction participation by, and disseminating licenses among, a wide variety of bidders; and encouraging new entrants to deploy services.<sup>23</sup> Proposal 2 is also consistent with sound economic principles and would provide opportunities for a variety of bidders and business plans. If the Commission decides to modify rather than eliminate the B Block guard bands, the Commission should adopt Proposal 5.<sup>24</sup> In any event, the Commission should reject Proposal 1 as a transparent attempt to prejudice the auction results through the use of block sizes and geographic areas that are inaccessible to the vast majority of bidders.<sup>25</sup>

#### **A. The Commission Should Adhere to Economic Principles, as Set Forth in SpectrumCo's Filings, That Promote Flexibility and Accommodate a Wide Range of Business Plans**

SpectrumCo's prior submissions in the 700 MHz Commercial Services proceeding explained, in terms of 700 MHz auction design, that (1) smaller bandwidths (utilizing 10 MHz blocks in the Upper 700 MHz band) would maximize flexibility; (2) EA licenses would be best suited to meet the demand for medium and large geographic area coverage; and (3) only one

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<sup>20</sup> *Further Notice* ¶¶ 171, 182-83.

<sup>21</sup> *See id.* ¶¶ 184-206.

<sup>22</sup> *See id.* ¶¶ 192-93.

<sup>23</sup> *See* 47 U.S.C. § 309(j)(3)(B), (j)(4)(C).

<sup>24</sup> *See Further Notice* ¶¶ 204-06.

<sup>25</sup> *See id.* ¶¶ 190-91.

block of CMA-sized licenses would be necessary to meet the demand for small geographic area coverage.<sup>26</sup> A review of those SpectrumCo submissions demonstrates that Proposal 2 fulfills these economic principles.

**1. The 20 MHz Upper 700 MHz Band D Block Should Be Divided into Two 10 MHz Blocks to Increase Efficiency and Flexibility**

To increase efficiency and flexibility in the auction process, SpectrumCo urged the Commission to divide the existing 20 MHz D Block in the Commission's prior Upper 700 MHz band plan into two smaller 10 MHz blocks.<sup>27</sup> The resulting three 10 MHz blocks in the Upper 700 MHz band will increase the number of bidding opportunities in each market, while still enabling bidders to combine two or three of these blocks where larger aggregations of spectrum are desired.<sup>28</sup> By contrast, retaining a single 20 MHz (or larger) block in the Upper 700 MHz band would limit the opportunities for efficient assignment of this spectrum during the upcoming auction.<sup>29</sup>

The successful AWS-1 auction demonstrates the advantages that dividing the 20 MHz D Block license into two 10 MHz blocks will bring. Three of the six license blocks offered in the AWS-1 auction (C, D and E) were 10 MHz each. Many bidders, including some new entrants, won only 10 MHz in a given geographic market, indicating that those bidders' demands

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<sup>26</sup> See Letter from Michele C. Farquhar, counsel for SpectrumCo LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 06-150 (filed Jan. 8, 2007) ("SpectrumCo January 8th Letter"); Coleman Bazelon, "The Economics of License Sizes in the FCC's 700 MHz Band Auction," WT Docket No. 06-150 (filed Jan. 8, 2007) ("Bazelon White Paper"); Bazelon Principles; Coleman Bazelon, "Why the Exclusive Use of Large Licenses in the Upper or Lower 700 MHz Bands Would Reduce the Efficiency of the 700 MHz Auction" WT Docket No. 06-150 (filed Apr. 20, 2007) ("Bazelon Analysis").

<sup>27</sup> See, e.g., SpectrumCo January 8th Letter at 3.

<sup>28</sup> *Id.*

<sup>29</sup> Bazelon Principles at 4-5.



were satisfied with smaller bandwidth licenses.<sup>30</sup> Some of the more limited AWS-1 auction demand would have been lost if all of the licenses had been 20 MHz.<sup>31</sup> Furthermore, as detailed in SpectrumCo’s filings, the AWS-1 auction demonstrated that smaller bandwidths can be aggregated successfully.<sup>32</sup>

## **2. EA Licenses Best Meet Wide-Ranging Bidder Demands**

As SpectrumCo has demonstrated, EA licenses are best-suited to meet the demands of a wide variety of bidders, including those seeking to acquire licenses covering large and medium-sized geographic service areas. EA licenses accommodate the demands of bidders – both incumbents and new entrants – seeking to acquire an array of service territory sizes and license configurations covering large and small geographic areas, including bidders with uniquely defined spectrum needs on a national, regional, or local basis.<sup>33</sup> To be sure, SpectrumCo’s successful experience in the AWS-1 auction shows that EA licenses can be used as “building blocks” to aggregate a nationwide package of licenses.<sup>34</sup>

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<sup>30</sup> See, e.g., Comments of MetroPCS Communications, Inc., WT Docket No. 06-150, at 9 n.28 (filed Sept. 29, 2006) (noting “the growth of business plans which can be implemented on a 10 MHz license,” and explaining that “MetroPCS has successfully devised a strategy to allow 10 MHz of spectrum to be sufficient to provide service in metropolitan areas, including Miami, Sacramento, San Francisco, and Detroit”).

<sup>31</sup> Bazelon Principles at 5 (citing *Service Rules for Advanced Wireless Services In the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, *Order on Reconsideration*, 20 FCC Rcd 14058, 14064 ¶ 10, 14066-67 ¶ 15 (2005) (“AWS Reconsideration Order”)).

<sup>32</sup> See SpectrumCo January 8th Letter at 5; Bazelon White Paper at 6-7; Bazelon Principles at 2-3; Bazelon Analysis at 2-3.

<sup>33</sup> See Bazelon White Paper at 2, 4-5, 9-12; Bazelon Principles at 2-3; Bazelon Analysis at 1, 5-6.

<sup>34</sup> See Bazelon White Paper at 11-12; Bazelon Principles at 2-3; Bazelon Analysis at 1, 5-6. SpectrumCo’s experience in the AWS-1 auction, as well as the history of the largest incumbent wireless providers, demonstrates that bidders can assemble large regional and nationwide footprints using licenses no larger than EAs. See Bazelon Principles at 3 (concluding that there is no need to offer more than one REAG license in the 700 MHz auction and that the use of package bidding would obviate the need for *any* licenses as large as an REAG).



Therefore, any proposal that the Commission adopts should maximize the number of EA licenses available.<sup>35</sup> Making only large licenses available in the Upper 700 MHz band (in terms of geography or bandwidth) would almost surely suppress the demand of smaller bidders with more limited geographic or bandwidth needs. In the AWS-1 auction, the demand from the 153 bidders (amounting to 91% of the 168 eligible bidders in the auction) that never placed a bid on an REAG license would have been lost if the Commission had adopted a band plan that made available nothing but large licenses.<sup>36</sup>

### **3. Demand for CMA Licenses is Limited**

As illustrated in prior SpectrumCo filings, the Commission does not need to set aside more than one block of CMA licenses to meet the demand for licenses covering small geographic areas. SpectrumCo proposed assigning the B Block in the Lower 700 MHz band on the basis of CMAs because of this block's spectral proximity to the Lower 700 MHz C Block licenses that the Commission previously auctioned on a CMA basis.<sup>37</sup> The analysis presented by SpectrumCo and the Commission's past auction results suggest that no additional spectrum blocks in the 700 MHz band should be reassigned to CMAs at this time.

#### **B. Proposal 1 is Contrary to the Commission's Interest in Promoting a Successful, Competitive Auction With a Variety of Bidders, and Contrary to Congress' Directives in Section 309(j)**

The Commission should summarily reject Proposal 1 for the Upper 700 MHz band plan, which would auction the C Block as a 22 MHz REAG license and the D Block as a 12 MHz

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<sup>35</sup> See Bazelon White Paper at 9-11.

<sup>36</sup> See *id.* at 9.

<sup>37</sup> See SpectrumCo January 8th Letter at 3 ("In the Lower 700 MHz band, the Commission should auction . . . the B Block on a Cellular Market Area ("CMA") basis (facilitating aggregation opportunities with the adjacent C Block in the Lower 700 MHz band, which has already been auctioned on a CMA basis) . . ."). SpectrumCo supports the Commission's decision to adopt this approach in the Lower 700 MHz band. See *Further Notice* ¶ 181.

REAG license.<sup>38</sup> The proposal contains only large block REAG licenses in the upper band and appeals to a very limited number of bidders, effectively prejudging the 700 MHz auction results. Proposal 1 fails to offer the balanced mix of geographic licenses intended by the Commission's decision in the *700 MHz Report and Order*,<sup>39</sup> and fails to satisfy Congress' equitable distribution directives in Section 309(j).<sup>40</sup>

Adopting the REAG-only band plan in Proposal 1 would substantially reduce the number of bidders, make the auction less competitive, and reduce auction revenues. It would likely foreclose participation in the upcoming auction by all but the largest incumbent carriers and exceedingly well-financed companies. As these license sizes may exceed most bidders' demands, numerous potential new entrants and existing regional and rural wireless carriers would be shut out of the auction.<sup>41</sup> If it adopts Proposal 1, the Commission would effectively prejudge the 700 MHz auction by advantaging the single wide-area, large bandwidth business model over others.

Furthermore, the Commission should be concerned about what would happen if the few entities that have requested nationwide or large geographic areas and large bandwidths fail to participate in the auction.<sup>42</sup> With so few bidders interested in a 22 MHz REAG block, the

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<sup>38</sup> See *Further Notice* ¶¶ 190-91.

<sup>39</sup> See *id.* ¶¶ 192-93; *700 MHz Report and Order* ¶ 42.

<sup>40</sup> See *supra* notes 5-6 and accompanying text.

<sup>41</sup> See *AWS Reconsideration Order* ¶ 10 ("Specifically, we find . . . that a 30 megahertz REAG block is too large for most bidders and should be broken into smaller components that could be aggregated, and that offering an additional block licensed on an EA basis would help enhance the mixture of large and small geographic area licenses available to applicants.").

<sup>42</sup> The few parties expressing interest in these large blocks include Verizon Wireless, AT&T, and members of the Coalition for 4G in America. See, e.g., Reply Comments of AT&T Inc., WT Docket No. 06-150, at 3-12 (filed Oct. 20, 2006); Letter from Ruth Milkman, counsel for Access Spectrum L.L.C., and on behalf of the Coalition for 4G in America, to Marlene Dortch, Secretary, Federal Communications Commission, WT Docket No. 06-150 (filed Mar. 6, 2007) ("Coalition for 4G in America *Ex Parte*"); Letter from Charla M. Rath, Executive Director – Spectrum and Public Policy, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 06-150 (filed Apr. 17, 2007).

absence of any one potential bidder from the auction could have a significant negative impact on the auction's efficiency and revenues.<sup>43</sup> With smaller licenses and, consequently, more robust demand, license prices would be less sensitive to the loss of a single bidder.

Moreover, there is no guarantee that certain high-tech coalition members seeking large blocks of nationwide spectrum will become successful wireless broadband providers.<sup>44</sup> Tilting the auction toward parties that may not participate, yet who claim that 20 MHz or larger blocks and nationwide or REAG licenses are necessary to facilitate a wireless broadband service to the home, assumes too much. First, there is no clear reason why any entity needs a complete national footprint to offer broadband services to the home. Second, the economic drivers that support national mobile phone networks may not translate to the business model of wireless broadband to the home. Finally, there has been no demonstration in the record that a single 22 MHz block (as opposed to two smaller, aggregable blocks) is necessary to launch a broadband wireless service as a new entrant.

An overwhelming number of commenters have expressed support in the record for geographic license areas smaller than REAGs, and for dividing the 20 MHz block in the Upper 700 MHz band.<sup>45</sup> Proposal 1 should be rejected because it arbitrarily attempts to "pick winners"

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<sup>43</sup> As discussed in Section II above, the experience of Wireless DBS in the AWS-1 auction provides a concrete example of why the Commission cannot cater to specific commenters or potential bidders. *See supra* notes 17-19 and accompanying text.

<sup>44</sup> *See supra* note 15 (citing Google executives' statements indicating that the company does not intend to bid in the 700 MHz auction).

<sup>45</sup> Commenters favoring smaller license areas include the supporters of the Balanced Consensus Proposal (including Alltel Corporation, Aloha Partners, Blooston Rural Carriers, C&W Enterprises, ConnectME Authority, Corr Wireless Communications, Dobson Communications Corporation, Leap Wireless, Maine Office of the Chief Information Officer, MetroPCS Communications, NTCA, Nebraska PSC, North Dakota PSC, Rural Cellular Association, Rural Telecommunications Group, Union Telephone Company, United States Cellular Corporation, Vermont Department of Public Service, Vermont Office of the Chief Information Officer, Vermont Public Services Board, and Vermont Telephone Company), as well as T-Mobile USA, OPASTCO, Consumer Federation of America, NextWave Broadband, Frontier Communications, Milky Way Broadband, Council Tree Communications, Doug Howard and Farooq Javed, and Access Spectrum.

among potential bidders, and is apparently aimed at favoring selected parties with untested business plans at the expense of all other bidders that may wish to provide service based on different business models.

**C. The Commission Should Adopt Proposal 2 and Auction the C Block on an EA Basis to Encourage Bidders of All Sizes and Business Plans to Participate in the 700 MHz Auction**

Consistent with its prior filings in this proceeding, SpectrumCo supports the smaller block sizes and mix of geographic areas offered in Proposal 2 for the Upper 700 MHz band plan. The proposal, which approximates the mix of geographic license sizes adopted for the AWS-1 Auction, would have the 12 MHz E Block auctioned on an REAG basis, the 11 MHz D Block auctioned on an EA basis, and the 11 MHz C Block auctioned on a CMA or an EA basis (preferably an EA basis).<sup>46</sup> It provides a flexible building block design suitable for a wide variety of bidders and business models and, unlike other proposals, it does not prejudice the auction results by precluding widespread participation due to the use of massive block sizes and REAG-only geographic areas. SpectrumCo further encourages the Commission to auction the C Block on an EA (rather than a CMA) basis as part of Proposal 2 to provide additional flexibility to bidders interested in aggregating contiguous spectrum in the Upper 700 MHz band.

Proposal 2 is consistent with the Commission's decision in the *700 MHz Report and Order* to adopt a mix of geographic license areas.<sup>47</sup> If the Commission adopted Proposal 2 and adopted the proposed reconfiguration of the Lower 700 MHz band, the overall 700 MHz commercial services band (including spectrum already auctioned) would contain a balanced mix of three REAG or EAG blocks (one in the upper band, and two in the lower band), two CMA

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<sup>46</sup> See Further Notice ¶¶ 192-93.

<sup>47</sup> See *700 MHz Report and Order* ¶ 42.

blocks, and three EA blocks for commercial services (assuming the Upper 700 MHz band C Block is auctioned on an EA basis).<sup>48</sup>

Dividing the large 20 MHz block called for in the present Upper 700 MHz band plan and creating three smaller blocks in the Upper 700 MHz band would provide bidders with opportunities to customize their service areas, expand into new markets, and/or strategically supplement spectrum holdings in existing geographic areas. As seen in the AWS-1 auction, national wireless carriers will bid on and win smaller licenses in addition to REAG licenses, presumably because smaller licenses such as individual EA licenses better match their unique business plans and preexisting coverage maps in certain respects.<sup>49</sup> Proposal 2 provides similar flexibility, and also provides significant opportunities for bidders interested in establishing a nationwide footprint to aggregate EA licenses – much like SpectrumCo did in the AWS-1 auction. Not surprisingly, the principles of the band plan in Proposal 2 have already garnered significant support from the vast majority of commenters in this proceeding, including MetroPCS, Leap Wireless, T-Mobile, U.S. Cellular, Alltel, and numerous rural carriers.<sup>50</sup> SpectrumCo joins these commenters in urging the Commission to adopt Proposal 2.

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<sup>48</sup> The 700 MHz band would include 24 MHz for REAG or EAG licenses, 24 MHz for CMA licenses, and 34 MHz for EA licenses. The commercial bands would also include 2 MHz from MEA guard band licenses.

<sup>49</sup> T-Mobile spent \$1.3 billion and Cingular spent \$837 million on non-REAG licenses in the AWS-1 auction, and Verizon Wireless won several EA licenses.

<sup>50</sup> See, e.g., Reply Comments of the Supporters of the Balanced Consensus Plan, WT Docket No. 06-150, at Attachment (filed Oct. 20, 2006); Reply Comments of T-Mobile USA, Inc., WT Docket No. 06-150, at 4 (filed Oct. 20, 2006); Reply Comments of Vermont Department of Public Service, *et al.*, WT Docket No. 06-150, at 7 (filed Oct. 20, 2006); Comments of United States Cellular Corporation, WT Docket No. 06-150, at 6-7 (filed Sept. 29, 2006); Reply Comments of Leap Wireless International, Inc., WT Docket No. 06-150, at 2 (filed Oct. 20, 2006); Comments of the Rural Telecommunications Group, Inc., WT Docket No. 06-150, at 5 (filed Sept. 29, 2006); Reply Comments of Alltel Corporation, WT Docket No. 06-150, at 4 (filed Oct. 20, 2006); Reply Comments of MetroPCS Communications, Inc., WT Docket No. 06-150, at 8-10 (filed Oct. 20, 2006).

**D. If the Commission Decides to Relocate the Guard Bands, It Should Adopt Proposal 5**

If the Commission modifies the Upper 700 MHz guard bands to make 32 MHz of spectrum in the Upper 700 MHz band available for commercial licensing rather than 34 MHz, it should adopt Proposal 5<sup>51</sup> instead of Proposal 4.<sup>52</sup> Proposal 5 would auction the D and E Blocks on an EA basis, while Proposal 4 would auction the E Block on an EA basis but auction the D Block on an REAG basis. Proposal 5 includes an additional EA block and therefore provides more flexibility for bidders. It is superior to Proposal 4.

**IV. THE COMMISSION SHOULD NOT IMPLEMENT UNTESTED AUCTION DESIGN MECHANISMS**

**A. The Commission Should Not Use Combinatorial Bidding in the 700 MHz Auction**

At this late date, the 700 MHz auction is not the proper place for the Commission to introduce combinatorial bidding.<sup>53</sup> First, the problem combinatorial bidding is designed to fix – the risk of a failed aggregation keeping bidders from aggressively bidding in an auction – was not a problem in the AWS-1 auction and is unlikely to be one in the 700 MHz auction. Second, whatever aggregation risk may exist in the 700 MHz band auction is largely mitigated by adopting a band plan with multiple EA licenses. Finally, the implementation of a new, complicated auction format on a tight timeline is likely to be difficult and fraught with challenges, adding unnecessary risk to one of the Commission’s most important remaining auctions.

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<sup>51</sup> *Further Notice* ¶¶ 204-06.

<sup>52</sup> *Id.* ¶¶ 200-03.

<sup>53</sup> *See id.* ¶¶ 45, 191, 202, 206 (seeking comment on the use of combinatorial bidding for certain band plan proposals).

As SpectrumCo explained in previous filings, the risk of a failed aggregation can be easily managed through the sequential nature of the Commission's auction format. Although there may be some remaining risk, the amount is small. As Dr. Bazelon has estimated, the geographic aggregation premium reflecting the risk of failed aggregation observed in the AWS-1 auction was, *at most*, 12% to 15%.<sup>54</sup>

Moreover, the fact that there may be an aggregation premium is *not* direct evidence of any inefficiencies in the auction or even of a reduction in auction revenues. The mix of license sizes in the AWS-1 auction led to a robust allocation of licenses that allowed for both large and small demands to be met. SpectrumCo's experience showed that the smaller EA licenses could be successfully aggregated, while bidders with more limited demands were also successful. Moreover, even if aggregation premiums exist, larger license sizes do not necessarily translate into greater auction revenues. A larger supply of large licenses will reduce their price (suppressing part or all of any premium) while at the same time suppressing the demand from bidders with smaller spectrum needs or more limited budgets.<sup>55</sup>

By adding more EA licenses to the 700 MHz auction mix, the Commission would mitigate further the risk of a failed aggregation and, therefore, reduce the aggregation premium. In the AWS-1 auction, SpectrumCo successfully aggregated a nearly national set of licenses in the B Block, the only 20 MHz EA Block offered in the auction. If SpectrumCo had failed to win one or two key licenses, it would have had only very limited alternatives to complete its aggregation.<sup>56</sup> If there had been multiple EA licenses of 20 MHz like the B Block (or multiple 10 MHz EA licenses), the risk of a failed aggregation would have been much lower because

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<sup>54</sup> See Bazelon Analysis at 4.

<sup>55</sup> See *id.* at 5.

<sup>56</sup> The only option available would have been attempting to (imperfectly) replicate the missing EA license with a collection of CMA licenses, creating additional cost and aggregation risk.

SpectrumCo would have had to be outbid on more than one license in any key market for the EA aggregation strategy to fail. Similarly, multiple EA licenses in the Upper 700 MHz band would reduce the risk of failed aggregation for bidders in the upcoming auction, thus reducing the potential benefits from a combinatorial auction.

Importantly, the risk of adopting a new auction format at this late date should not be underestimated. The current Simultaneous Multiple Round (“SMR”) auction rules employed by the Commission have been refined over the past dozen years. By contrast, the combinatorial rules that would be used in the 700 MHz auction would be field tested during the auction itself – both by the Commission and participating bidders. Earlier implementations of the SMR auction format experienced numerous issues, including gaming of the system, that required subsequent refinement of auction rules. The first-time-ever implementation of a combinatorial auction is likely to face similar issues, as well as additional unforeseeable problems.

Finally, even if the Commission decides to go forward with combinatorial bidding, there are statutorily mandated procedural considerations related to the details of any proposal (including comments, reply comments, and reconsideration petitions) that risk delaying the auction past the mandated start deadline of January 28, 2008, or that might otherwise harm the auction by significantly reducing the period of time between the issuance of the auction rules and the start of the auction. In sum, the risk of combinatorial bidding might be worth it if the combinatorial auction were expected to generate commensurate gains; however, as explained, any gains would likely be minimal.

**B. The Commission Should Not Adopt Anonymous or Blind Bidding Mechanisms in Response to Flawed Arguments**

The amount of information made available to bidders during the auction about other bidders can potentially influence auction outcomes in two competing ways. First, the “linkage



principle” – the idea that when bidders’ valuations are related, more information revealed tends to increase auction efficiency – suggests that an open (*i.e.*, not blind) auction will be more efficient. Second, it has been argued that more information about bidders’ bids may make it easier for some bidders to engage in conduct such as retaliatory bidding, thus potentially reducing the efficiency of the auction, especially when demand in an auction is relatively low. In attempting to balance these two competing effects, the Commission devised a framework for the AWS-1 auction whereby bidding would be blind if initial demand was below a given threshold, but open if it was above the threshold.<sup>57</sup> There are no new or different developments that have emerged for the 700 MHz auction that should lead the Commission to change significantly the approach taken in the AWS-1 auction.<sup>58</sup>

Whatever the Commission decides to do for the 700 MHz auction, however, it should not be influenced by the research papers by Dr. Gregory Rose filed by Media Access Project (“MAP”).<sup>59</sup> Dr. Rose makes several speculative charges, including that some bidders used retaliating bids in the AWS-1 auction and that so-called “incumbents” successfully blocked other potential bidders in that auction. Dr. Rose’s analysis, however, reveals a fundamental misunderstanding of Commission spectrum auctions and related license valuations. The analysis also bootstraps his conclusions by assuming that any bid by one of his so-called “incumbents” is an effort to block one of his so-called “targets.”

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<sup>57</sup> See *Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006, Notice and Filing Requirement, Minimum Opening Bids, Upfront Payment and Other Procedures for Auction No. 66*, Public Notice, 21 FCC Rcd 4562, 4565 ¶ 4, 4601 ¶ 142 (2006) (“*Auction 66 Procedures Notice*”).

<sup>58</sup> *Further Notice* ¶¶ 246-49 (seeking comment on competitive bidding procedures for the 700 MHz auction).

<sup>59</sup> See Letter from Harold Feld, counsel to Media Access Project, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 06-150, Affidavit of Dr. Gregory Rose (filed Apr. 19, 2007); *How Incumbents Blocked New Entrants in the AWS-1 Auction: Lessons from the Future and Tacit Collusion in the AWS-1 Auction: The Signaling Problem*, Dr. Gregory Rose, attached to Letter from Harold Feld, counsel to Media Access Project, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 06-150 (filed Apr. 23, 2007).

Ultimately, Dr. Rose demonstrates nothing other than that his so-called “target” bidders were unwilling to pay the market price for licenses established in the AWS-1 auction. As the Commission balances the competing effects of making information available during the auction, the analysis provided by Dr. Rose should not move the scales even a hair’s breadth.

**V. THE COMMISSION SHOULD NOT ADOPT PROPOSED PERFORMANCE REQUIREMENTS THAT WOULD AMOUNT TO A RADICAL DEPARTURE FROM MARKET-ORIENTED POLICIES AND THAT WOULD NOT PROMOTE DEPLOYMENT**

The Commission’s proposed geographic coverage-based performance requirements would be a radical departure from the sound, flexible and market-oriented policies that have served consumers well since the early days of competitive bidding. This policy shift would have severe, negative consequences for the 700 MHz auction and would likely impede rural wireless deployment. Moreover, such performance requirements would be entirely unnecessary if the Commission were to adopt a band plan that includes more licenses with smaller geographic area coverage, thus facilitating greater participation by a broad range of potential bidders (including those seeking to serve more rural areas) and decreasing deployment costs for each license. Ultimately, however, no matter what band plan proposal the Commission adopts, there is no legitimate, factual basis for such a dramatic shift in the Commission’s network build-out policy for auctionable licenses, and the proposed performance requirements should not be adopted.

In the *Further Notice*, the Commission describes and seeks comment on a proposal to require future 700 MHz licensees to “provide coverage of 25 percent of the geographic area of the license within three years of the grant of the initial license, 50 percent of this area within five

years, and 75 percent of this area within eight years.”<sup>60</sup> Under the proposal, land owned or leased by the government would be excluded from the coverage requirement.<sup>61</sup>

The Commission also seeks comment on the potential consequences of a licensee’s failure to meet the proposed interim geographic area coverage benchmarks, suggesting that in response the Commission could either: (1) reduce the term of the relevant license or (2) reduce the geographic area covered under the license through a proportionate “keep what you use” approach, so that the network coverage provided under the resulting license would be sufficient to satisfy the applicable interim coverage benchmark.<sup>62</sup>

In addition, the Commission seeks comment on how it might apply a “keep what you use” rule, noting that it could require licensees to relinquish all geographic areas under their licenses that are not served, regardless of whether the licensees satisfied the applicable geographic coverage benchmarks for the relevant licenses; or the Commission could provide that only licensees that failed to satisfy their applicable geographic area coverage thresholds would lose access to geographic areas.<sup>63</sup>

**A. The Current Substantial Service Regime Reflects Sound Public Policy for a Competitive Market**

As the Commission has noted, the use of competitive bidding to assign initial spectrum licenses ensures that the licenses are “assigned efficiently to . . . firm[s] that [have] shown by [their] willingness to pay market value [their] willingness to put the license[s] to [their] best

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<sup>60</sup> *Further Notice* ¶ 212.

<sup>61</sup> *Id.* ¶ 213.

<sup>62</sup> *Id.* ¶ 214.

<sup>63</sup> *Id.* ¶ 215.

use.”<sup>64</sup> Moreover, in competitive markets such as wireless, operators have the strongest incentives to expand their networks aggressively in search of new customers. Acknowledging the benefits of a competitive market, robust auctions, and a market-oriented spectrum policy, the Commission, when establishing the Part 27 regulatory framework for auctionable wireless services, sought to impose a license construction requirement that would provide “licensees with the flexibility to offer a range of services.”<sup>65</sup> According to the Commission, “[g]iven the broad range of new and innovative services that . . . might be provided . . . imposing strict construction requirements that would apply over the license term would be neither practical nor desirable as a means of meeting Section 309(j)’s objectives regarding warehousing and rapid deployment.”<sup>66</sup> Recognition of the benefits of a flexible, market-oriented network build-out policy has led the Commission, *in every wireless service rules proceeding since 1997*, to satisfy its performance requirement mandate under Section 309(j)<sup>67</sup> by establishing substantial service standards, rather than the more prescriptive and less market-oriented network build-out requirements that were imposed in the days before “flexible use” and competitive bidding.<sup>68</sup> In that time, some of the

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<sup>64</sup> *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (“WCS”),* GN Docket No. 96-228, Report and Order, 12 FCC Rcd 10785, 10844 ¶ 114 (1997) (“*WCS Report and Order*”).

<sup>65</sup> *Id.* at 10843 ¶ 112.

<sup>66</sup> *Id.*

<sup>67</sup> Under Section 309(j)(4)(B), the Commission’s performance requirements for auctionable services must be designed to “ensure prompt delivery of service to rural areas . . . prevent stockpiling or warehousing of spectrum . . . and . . . promote investment in and rapid deployment of new technologies and services.” 47 U.S.C. § 309(j)(4)(B).

<sup>68</sup> See, e.g., *WCS Report and Order* at 10843 ¶ 112; *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, WT Docket No. 03-66, Order on Reconsideration and Fifth Memorandum Opinion and Order, Third Memorandum Opinion and Order, and Second Report and Order, 21 FCC Rcd 5606, 5720 ¶ 278 (2006) (“*BRS/EBIS Second Report and Order*”) (“We believe that establishing a substantial service standard with safe harbors will ‘ensure prompt delivery of service to rural areas, . . . prevent stockpiling or warehousing of spectrum by licensees or permittees, and . . . promote investment in and rapid deployment of new technologies and services’ . . . .”) (internal citations omitted). The Commission also stated in the *BRS/EBIS Second Report and Order* that it “believe[d] a market-oriented approach to spectrum policy that utilizes a substantial service standard to

most robust wireless networks in the world have been built, with more than 195,000 cell sites in operation in the United States.<sup>69</sup>

Consistent with this market-oriented approach, the Commission correctly determined in its initial decision establishing service rules for the 700 MHz band that a substantial service requirement would best promote its policy goals by “provid[ing] licensees with the flexibility to offer the full range of services under the allocations table and accommodate new and innovative services.”<sup>70</sup> The Commission also found that the imposition of substantial service “fulfills [its] obligations under Section 309(j)(4)(B) of the Act, and that the auction rules for this spectrum, together with the service rules adopted in this proceeding, and [its] overall competition and universal service policies, constitute effective safeguards and performance requirements for licensing this spectrum.”<sup>71</sup> There simply is no evidence, nor sound economic reasoning, suggesting a problem that warrants revisiting these rules.

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meet buildout requirements best ensures actual deployment of wireless facilities and broader provision of wireless services” and that “[e]conomic forces will guide competing providers to innovate and broaden deployment of services.” *Id.* The Commission concluded that it “believe[d] that substantial service provides licensees flexibility ‘to tailor the use of their spectrum to unique business plans and needs’” and “that establishing more flexible rules will result in ubiquitous, high-quality service to the public and at the same time encourage investment by increasing the value of licenses.” *Id.*; see also *Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, Report and Order, 18 FCC Rcd 25162, 25192 ¶ 75 (2003) (“Section 27.14(a)’s substantial service requirement will provide licensees greater flexibility to determine how best to implement their business plans based on criteria demonstrating actual service to end users. This requirement provides the flexibility required to accommodate the new and innovative services that we believe will be forthcoming in these bands.”).

<sup>69</sup> See CTIA Semi-Annual Wireless Industry Survey, *End-of-Year 2006 Top-Line Survey Results*, at 9, available at <http://www.ctia.org/advocacy/research/index.cfm/AID/10316> (Dec. 2006).

<sup>70</sup> *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 99-168, First Report and Order, 15 FCC Rcd 476, 505 ¶ 70 (2000) (“*Upper 700 MHz First Report and Order*”).

<sup>71</sup> *Id.* at 506 ¶ 72.

**B. More Prescriptive, Geographic Area-Based Performance Benchmarks Are Not Needed to Spur 700 MHz Network Deployment and Would be Counterproductive to That Goal**

When the Commission makes a fundamental change in policy, it has an obligation to provide a reasoned analysis justifying the change.<sup>72</sup> In this case, however, no legitimate reason for more prescriptive benchmarks has been stated and no such rationale exists.

First, the wisdom of substantial service and a flexible and market-oriented approach to network build-out has been demonstrated in the marketplace. The advantages of substantial service were forcefully affirmed by the Commission when it last examined ways to expand the deployment of wireless services in rural areas. The Commission compared the advantages and disadvantages of a more flexible substantial service approach to those of more prescriptive build-out regimes (such as the type proposed in the *Further Notice*), and decided to afford licensees in the small number of auctionable wireless services that were not already subject to substantial service standards the ability to take advantage of that regime.<sup>73</sup> In reaching its decision, the Commission stated its belief that “modifying [its] rules to permit these additional licensees to satisfy their construction requirements by providing substantial service will increase their flexibility to develop rural-focused business plans and deploy spectrum-based services in more sparsely populated areas without being bound to concrete population or geographic coverage

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<sup>72</sup> See, e.g., *D&F Afonso Realty Trust v. Garvey*, 216 F. 3d 1191, 1194 (D.C. Cir. 2000) (setting aside an FAA hazard determination that was inconsistent with established agency standards); *Public Citizen, Inc. v. FAA*, 988 F.2d 186, 197 (D.C. Cir. 1993) (“The requirement that agency action not be arbitrary or capricious includes a requirement that the agency explain its result.”).

<sup>73</sup> See *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, WT Docket No. 02-381, Report and Order, 19 FCC Rcd 19078, 19120-21 ¶ 75 (“*Rural Report and Order*”) (providing licensees in the 30 MHz broadband PCS, 800 MHz SMR, 220 MHz, and LMS services with “the option of satisfying their construction requirements by providing substantial service or by complying with other service-specific construction benchmarks already available to them under the Commission’s rules”).

requirements.”<sup>74</sup> Notably, in this same decision the Commission rejected proposals to abandon substantial service performance benchmarks in favor of less flexible build-out obligations and a “keep what you use” regime.<sup>75</sup> The Commission also declined to adopt geographic area-based construction benchmarks for wireless services, noting that its substantial service policies afford wireless providers interested in providing service to particular geographic regions within their license areas the flexibility to do so without risking the loss of their licenses.<sup>76</sup> Nothing has changed to justify a radical shift from this well-settled policy.

Furthermore, in its most recent CMRS Competition Report, issued in September 2006, the Commission found that “98 percent of the total U.S. population . . . have three or more different operators . . . offering mobile telephone service in the counties in which they live,”<sup>77</sup> up from 88 percent in 2000.<sup>78</sup> This expansion of wireless penetration and competition has pushed the deployment of wireless networks, including broadband networks, well beyond urban and suburban areas and into rural areas.

Second, the Commission’s change in policy would make it less viable financially to provide service using the 700 MHz band in rural markets, or markets in which rural areas exist, impeding deployment and eliminating the advantages of using the spectrum to deploy next-

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<sup>74</sup> *Id.* at 19121-22 ¶ 76. Quoting reply comments filed by Southern LINC in the proceeding, the Commission stated that “while a substantial service alternative, by itself, does not guarantee that all licensees will serve rural areas, the additional flexibility of this alternative undoubtedly improves the likelihood of rural deployment and provides licensees with the opportunity to target rural areas.” *Id.* at 19122 ¶ 76 (internal citations omitted).

<sup>75</sup> *Id.* at 19122-23 ¶ 78.

<sup>76</sup> *Id.* at 19124-25 ¶ 82.

<sup>77</sup> *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 06-17, Eleventh Report, 21 FCC Rcd 10947, 10964 (2006) (“*Eleventh CMRS Competition Report*”).

<sup>78</sup> *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Fifth Report, 15 FCC Rcd 17660, 17665 (2000).

generation networks in those markets. Even with the propagation characteristics of the spectrum band, and even if a more attractive mix of geographic area license sizes are ultimately offered in the 700 MHz auction, the Commission's proposed performance requirements would raise the risk of license forfeiture and reduce the flexibility of wireless operators to design and deploy their networks in a manner that best promotes their business plans. In fact, imposition of such requirements could cause viable bidders to avoid the auction altogether.

Like all terrestrial networks, wireless networks tend to be most heavily deployed in areas where the greatest use of the networks can be expected due to the density of the area's population, whether that population is stationary or mobile. As Verizon Wireless has noted, a geographic area-based construction requirement "would fail to take into account the stark disparities in population densities that exist in the United States. . . . [A]ccording to 2000 Census data, 50% of the population lives in the most densely populated counties in the country covering only 3% of the geographic area of the nation. . . . Only 5% of the population lives in the least densely populated counties that cover more than 55% of the total area of the United States, even if Alaska is excluded."<sup>79</sup> These realities of network economics and population distribution can have a significant impact on the viability of wireless network deployments, making it more cost-effective to build-out initially in densely populated areas. Thus, if the Commission's build-out proposal is adopted, operators would be hard pressed to justify the level of network deployment necessary to satisfy the Commission's benchmarks in less densely populated areas, making those areas much less attractive to acquire or to attempt to deploy. Consequently, the high cost of

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<sup>79</sup> *Ex Parte* Presentation of Verizon Wireless, WT Docket No. 06-150, at 10-11 (filed Apr. 4, 2007) (citations omitted) ("Verizon Wireless April 4, 2007 *Ex Parte*"). Verizon Wireless also pointed out the "unevenness" of the population groupings that exist within the Commission's traditional geographic license areas. For example, it pointed out that although the Denver EA license area "currently has a population of 4.3 million[, f]ully 90% of the population of the Denver EA occupies only one quarter of the geographic area of the EA." *Id.* at 11.



Commission-mandated network build-out – and the potential lack of interest in certain 700 MHz licenses that could result – could further exacerbate the disparity between network coverage in urban and rural areas that the Commission apparently seeks to address with its proposal.

Third, the Commission’s network build-out proposal conflicts with other important goals of Section 309(j), such as the promotion of wireless market competition<sup>80</sup> and new entry,<sup>81</sup> the avoidance of excessive concentration of spectrum licenses,<sup>82</sup> and the development and rapid deployment of new technologies, products and services,<sup>83</sup> by significantly favoring incumbent wireless providers. These incumbent providers, some of which have proposed these geographic area-based performance benchmarks,<sup>84</sup> already own a significant number of towers or have tower leasing arrangements in place and would thus be in a better position to satisfy the Commission’s proposed standards than new entrants. These factors further underscore the need for the Commission to reconsider its proposal and issue final rules that reaffirm application of its long-standing substantial service policy.

Fourth, there is no evidence in the record that spectrum warehousing of the type contemplated under Section 309(j)<sup>85</sup> has occurred or will occur with respect to 700 MHz spectrum. For warehousing to be an economically sensible strategy for any firm, its actions – removing a fixed supply of spectrum from a market – must have offsetting benefits in terms of the higher prices that the firm could then charge. Given the intense state of wireless competition, the 700 MHz band’s propagation characteristics, the absence of incumbents in the band after

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<sup>80</sup> See 47 U.S.C. § 309(j)(3)(B).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> See *id.* § 309(j)(3)(A).

<sup>84</sup> See Comments of Rural Cellular Association, WT Docket. No. 06-150, at 8-10 (filed Sept. 29, 2006).

<sup>85</sup> As noted above, Section 309(j)(4)(B) requires the Commission to promulgate safeguards against “stockpiling or warehousing of spectrum.” 47 U.S.C. § 309(j)(4)(B).

February 2009, the need for additional spectrum to provide advanced wireless services, and the intense interest in the band from incumbents and potential new entrants alike, 700 MHz auction winners will be eager to deploy the spectrum as quickly and aggressively as possible after securing their licenses, and no regulatory drivers are needed.

Fifth, if adopted, the Commission's proposal would impair the auction and reduce auction revenues. As noted above, because a geographic area-based build-out requirement would make deployment of new networks in markets containing sparsely populated areas less viable financially, there will be less competition in this auction for those markets or licenses. Again, this fact will likely exacerbate, rather than ameliorate, the disparity between urban and rural wireless network deployment by eliminating those potential bidders that would have otherwise been interested in bidding and launching service over time under the Commission's substantial service rules. The resulting reduction in competition for licenses sold in the auction would reduce auction revenues, impeding the Commission's ability to "recover[] for the public a portion of the value of the public spectrum resource."<sup>86</sup>

If, despite arguments to the contrary, the Commission ultimately concludes that more prescriptive performance requirements are warranted, SpectrumCo respectfully suggests that the Commission consider the safe harbors proposed by Verizon Wireless.<sup>87</sup> Verizon Wireless suggested that the Commission adopt safe harbors based on the population-based coverage standard used for broadband PCS (service to one-third of the population of the license area within five years and service to two-thirds within 10 years or at the end of the license term)

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<sup>86</sup> *Id.* § 309(j)(3)(C).

<sup>87</sup> *See, e.g.*, Letter from Michael P. Samsock, Verizon Wireless, to Marlene H. Dortch, Secretary, Federal Communications Commission, Docket No. 06-150 (filed Jan. 31, 2007); *see also* Verizon Wireless April 4, 2007 *Ex Parte* at 6-7.

currently contained in Section 24.203 of the Commission’s rules<sup>88</sup> and the threshold for wireless service in rural markets that the Commission adopted in the *Rural Report and Order* (i.e., mobile service to 75% of the geographic area of at least 20% of the rural areas located in the licensed area).<sup>89</sup>

### **C. The Commission Should Not Adopt a “Keep What You Use” Rule**

Even if the Commission decides to adopt geographic area-based performance requirements for the 700 MHz band, it should not adopt either of the “keep what you use” policy proposals described in the *Further Notice*.<sup>90</sup> In addition to being difficult to administer, they would establish a fertile environment for greenmail, a practice by which parties not interested in actually providing service utilize the regulatory process to extract concessions from licensees. The first proposal – which would have 700 MHz licensees lose all areas under their licenses that were not built out by a date certain, even if the licensees had satisfied the underlying geographic area build-out requirement for the license – would be particularly punitive in view of the very aggressive build-out thresholds proposed by the Commission.

While not as draconian as the Commission’s first “keep what you use” proposal, the second proposal – which triggers a loss of geographic service areas only when the Commission’s network build-out thresholds for licenses are not met – would still be unjust if the build-out thresholds proposed in the *Further Notice* were maintained. The rule would also be difficult to administer due to the likelihood of disputes regarding what constitutes an “adequate signal” or “use,” and would hinder secondary market transactions by making it more difficult to determine the geographic areas that can properly be assigned and leased under a given license. Moreover,

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<sup>88</sup> See 47 C.F.R. § 24.203.

<sup>89</sup> See *Rural Report and Order* at 19123 ¶ 79.

<sup>90</sup> See *Further Notice* ¶¶ 214-16.

both proposals would lead to the possibility of a large number of licenses for sparsely populated geographic areas being returned to the Commission, as licensees with no real prospect of further use or build-out in areas devoid of a more densely populated or urban customer base could not offset their costs. Such a scenario would result in the inefficient use of 700 MHz spectrum (by having it sit idle with the Commission) and also would burden the Commission with further decisions regarding the assignment of this fallow spectrum.

## **VI. THE COMMISSION SHOULD REJECT ANY PROPOSAL TO RESTRICT ELIGIBILITY TO PARTICIPATE IN THE 700 MHz AUCTION AND HOLD LICENSES**

The Commission seeks comment in the *Further Notice* on a restrictive proposal put forward by MAP and an entity called the *Ad Hoc* Public Interest Spectrum Coalition (the “*Ad Hoc* Coalition”),<sup>91</sup> purportedly suggested by these entities in order “to encourage the entry of new competitors by excluding [ILECs], incumbent cable operators, and large wireless carriers from eligibility for licenses in the 700 MHz Band.”<sup>92</sup> The Commission should reject the *Ad Hoc* Coalition proposal to exclude certain bidders from the 700 MHz auction, and also should reject any variations of this proposal that would (1) exclude certain bidders from portions of the 700 MHz band, (2) require certain bidders to establish structurally separate affiliates in order to hold any 700 MHz licenses, (3) restrict in-region wireline broadband service provider eligibility for licenses, or (4) create bidding credits available only to new entrants unaffiliated with existing wireline broadband service providers.<sup>93</sup> The *Ad Hoc* Coalition’s proposal, in any of these potential forms or variations, prejudices the spectrum’s purpose and best use, and would reduce

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<sup>91</sup> SpectrumCo notes that MAP is also a member of the *Ad Hoc* Coalition and filed various submissions on behalf of the remaining coalition members. See *Further Notice* ¶ 221, n.462. For that reason, SpectrumCo refers to the proposal as the *Ad Hoc* Coalition proposal.

<sup>92</sup> *Id.* ¶ 221.

<sup>93</sup> *Id.*

the number of bidders participating in the 700 MHz auction, thereby making the auction less competitive.

Even with SpectrumCo's notable success in the AWS-1 auction, it only purchased a near-nationwide footprint of 20 MHz licenses in the continental United States, with 137 EA licenses covering 260.5 million people.<sup>94</sup> SpectrumCo's MSO members (and potentially other cable operators as well) may need access to additional spectrum to deploy wireless broadband services competitive with the offerings of other wireless licensees, including Verizon and AT&T. Cable operators may need more spectrum to compete with ILECs that intend to bundle wireless services with multichannel video, wireline broadband, and voice services, and that have far greater spectrum holdings than SpectrumCo.<sup>95</sup> Thus, cable operators have every incentive to develop wireless broadband offerings. Making this 700 MHz spectrum available without imposing artificial and inefficient eligibility restrictions, such as that that the *Ad Hoc* Coalition proposes, will facilitate broadband deployment consistent with critical Commission policy objectives.<sup>96</sup>

As illustrated above, the Commission has garnered extremely poor results in its past attempts to obtain the "procompetitive benefits of licensing" by *restricting* competition at the auction stage.<sup>97</sup> The Commission should not repeat the mistakes of the past by taking the counterproductive step of trying to divine the "market" in which the spectrum will be used

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<sup>94</sup> Bazelon White Paper at 8.

<sup>95</sup> See *Quotes from Tech, Media, Telecoms Execs in U.S.*, Reuters (May 17, 2007), available at <http://www.reuters.com/article/TechnologyMediaTelecoms07/idUSN1438047420070517?pageNumber=2> (including statements by Denny Strigl, COO of Verizon Communications Inc., that "[t]he quadruple play is something we're planning to offer later this year" and that such bundled offerings will "roll out where we do have a contiguous wireline and wireless footprint").

<sup>96</sup> See *700 MHz Report and Order*, Separate Statement of Chairman Kevin J. Martin (noting that "[o]ne important factor spurring both increased broadband availability and reduced prices is competition among broadband platforms").

<sup>97</sup> See *supra* Section II (citing *LMDS Second Report and Order* ¶ 13).

(despite flexible use policies) and then limiting eligibility for 700 MHz licenses in an attempt to promote competition and new entry into that “market.”<sup>98</sup> The restrictions put forward in the *Ad Hoc* Coalition proposal would decrease participation, dampen investor and market enthusiasm in the 700 MHz auction, and hinder (rather than promote) deployment of wireless broadband and other advanced wireless services.<sup>99</sup>

Notwithstanding the vague and purely speculative statements in the *Ad Hoc* Coalition’s *Ex Parte* comments, there is no basis to believe that so-called incumbents would “capture” and warehouse spectrum blocks proposed for the Upper 700 MHz band. Relying on little more than inapposite and inaccurate historical analogies<sup>100</sup> and economic studies submitted in dockets entirely unrelated to the Commission’s various 700 MHz proceedings,<sup>101</sup> the *Ad Hoc* Coalition proposal encourages the Commission to prevent existing wireline broadband and wireless providers from acquiring 700 MHz spectrum. The putative rationale for this approach is the claimed failure of the Commission’s auction policies to satisfy Congressional mandates and

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<sup>98</sup> The Commission likewise achieved dubious results by refusing to grant cable operators any BRS (previously known as MMDS) licenses, or allow cable operators to lease spectrum capacity using such licenses, in areas in which the cable operator holds a franchise. *See* 47 C.F.R. § 27.1202(a)-(b). The Commission’s failed attempt to spur entry and promote competition against cable operators resulted only in severe under-utilization of BRS spectrum. *See BRS/EBIS Second Report and Order* at 5614-16 ¶¶ 9-11 (2006). As is often the case, the Commission’s attempts to substitute its own judgment for that of the market proved ineffective, as efforts to prejudge the best use of BRS licenses and promote entry by new “wireless cable” providers in this spectrum proved unavailing.

<sup>99</sup> Contrary to the *Ad Hoc* Coalition’s claims, the “greatest danger” to the 700 MHz auction is indeed that such eligibility restrictions will reduce the competitiveness and efficiency of the auction by precluding participation of the entities best equipped to deploy services using this valuable spectrum. *See Ex Parte* Comments of the *Ad Hoc* Public Interest Spectrum Coalition, WT Docket No. 06-150, at 7 (filed Apr. 3, 2007) (“*Ad Hoc* Coalition *Ex Parte* Comments”).

<sup>100</sup> *See id.* at 8, 10. The *Ad Hoc* Coalition proposal references the Commission’s use of structural separation requirements in the *Computer II* and *Computer III* proceedings with almost no discussion of the subsequent history of those requirements, and without any mention of the fact that “[y]ears after the conclusion of the *Computer II* proceeding, the Commission determined that the cost of decreased efficiency and innovation imposed by the structural safeguards of *Computer II* outweighed their benefits.” *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, CC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14869 ¶ 26 (2005).

<sup>101</sup> *See Ad Hoc* Coalition *Ex Parte* Comments at 8-9, 13.

attain asserted public interest benefits.<sup>102</sup> This conclusion flies in the face of the general belief that the AWS-1 auction was one of the Commission's most successful to date.<sup>103</sup> The *Ad Hoc* Coalition's flawed history lesson fails to acknowledge that the most appropriate comparison for any 700 MHz auction design that would impose such burdensome and inefficient restrictions on participation and spectrum use would be the Commission's earlier, failed attempts to substitute its own judgments for those of the market.

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<sup>102</sup> See *id.* at 3, 5, 9.

<sup>103</sup> See Bazelon White Paper at 1 (citing Chairman Martin's pronouncement that the AWS-1 auction was "the biggest, most successful wireless auction in the [C]ommission's history").

## VII. CONCLUSION

For all of the foregoing reasons, SpectrumCo respectfully submits that the Commission should adopt Proposal 2 for the Upper 700 MHz band plan, in order to maximize bidder participation and flexibility for different business plans. Likewise, the Commission must avoid tailoring the auction to suit the demands, business plans, and resources of only a handful of commenters or potential bidders. The Commission should not implement untested and unjustified approaches in the upcoming auction or in the 700 MHz service rules, and should refrain from adopting combinatorial bidding and blind bidding mechanisms, radically different geographic coverage-based performance benchmarks, and anticompetitive eligibility restrictions.

Respectfully submitted,

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